



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Technology for Communications International

File: B-236922

Date: December 28, 1989

DIGEST

Proposed sole-source award is unobjectionable where the agency complied with statutory requirements for written justification and publication of notice in the Commerce Business Daily (CBD), and agency reasonably determined that only one source is available to supply the desired item. Protester, who submitted a statement of interest in response to CBD notice and solicitation, failed to submit any technical data showing how it would meet detailed requirements of the solicitation, even though it was specifically requested to do so, and thus did not establish that it is an available supplier.

DECISION

Technology for Communications International (TCI) protests the Army's proposed sole-source award to Eyring Research Institute, Inc., under request for proposals No. DAAB07-89-R-A086 for lightweight, quickly deployable, low profile antennas with delivery of 1005 antennas during a 7-month period after award. TCI contends that the contracting agency improperly determined that Eyring was the only responsible source capable of meeting the agency's needs and that the sole-source restriction is violative of the requirement for full and open competition.

We deny the protest.

The record shows that the Army had been interested in a low profile antenna for a number of years and had been monitoring technical developments concerning the product. In September 1988, Eyring submitted an unsolicited proposal for a low profile antenna. The Army conducted a market survey to determine if other sources were also available. During this market survey, 10 antenna firms, including TCI, were contacted by the Army. The Army's specific requirements were discussed with each firm. Not one of the firms

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called stated that it had a product meeting the Army's requirements. A senior engineer at TCI affirmed at that time that the protester did not have a conforming product and that the only available source he knew of the high frequency, low profile antenna was Eyring. Based upon the results of its market survey, and satisfactory testing of Eyring's product, the Army determined to follow the procedures required by 10 U.S.C. § 2304(f) (1988 ed.) for using other than competitive procedures. The Army executed justification for procurement by other than competitive procedures, citing the authority of 10 U.S.C. § 2304(c)(1), which permits a noncompetitive award where only one known responsible source or a limited number of responsible sources are available, and no other type of property or services will satisfy the agency's needs.

On August 11, 1989, the Army published in the Commerce Business Daily (CBD) a notice of its intention to procure 1005 of the Eyring low profile antennas from that firm through the use of other than full and open competitive procedures under Federal Acquisition Regulation (FAR) § 6.302-1. The synopsis also noted that although a sole-source contract award to Eyring was contemplated since Eyring is the only known available source of the needed product, all other expressions of interest in the requirement or proposals received within 45 days of the publication of the synopsis would be considered. The Army received statements of interest from two firms in response to the synopsis and solicitation, including TCI, but the Army concluded that neither firm was capable of meeting the agency's current requirements. The RFP was issued and mailed to TCI, Eyring and other interested vendors on August 28. On September 12, the Army requested that TCI submit technical information describing the antenna product it proposed to meet the specified requirements which the Army identified. On September 13, TCI instead filed its protest with our Office.

TCI asserts, that, even though it does not presently have a product meeting the Army's specifications, it will be able to design, manufacture and deliver such antennas within the RFP's delivery requirements.

The Army explains that the RFP's requirements stem from the current critical operational need of its special forces and other covert operations for antennas that can be "concealed from enemy observers yet maintain the ability to receive radio communications in a variety of weather conditions and terrain." The Army states that the antennas currently being deployed are unsatisfactory and risk the safety and effectiveness of military personnel in forward area field

operations because they must be mounted on masts protruding upwards from the ground, thus creating a "visual signature" for competing forces. The Army states that, based on its market survey and synopsis, only Eyring currently produces and markets a tested low profile antenna meeting the Army's critical requirements that can satisfy the tight delivery schedule.

Because the overriding mandate of CICA is for "full and open competition" in government procurements obtained through the use of competitive procedure, 10 U.S.C. § 2304(a)(1)(A), this Office will closely scrutinize sole-source procurements under the exception to that mandate provided by 10 U.S.C. § 2304(c)(1). Mine Safety Appliances Co., B-233052, Feb. 8, 1989, 89-1 CPD ¶ 127. Where, as here, however, the agency has substantially complied with the procedural requirements of CICA, 10 U.S.C. § 2304(f), calling for written justification for and higher-level approval of the contemplated sole-source action and publication of the required CBD notice, we will not object to the sole-source award unless it can be shown that there is not a reasonable basis for it. Id. In sum, excepting those noncompetitive situations which arise from a lack of advance planning, a sole-source award is justified where the agency reasonably concludes that only one known source can meet the government's needs within the required time. Data Transformation Corp., B-220581, Jan. 17, 1986, 86-1 CPD ¶ 55.

Although TCI contends that the sole-source award here is unjustified because TCI is capable of designing and producing low profile antennas within the RFP's delivery schedule the protester has not presented any technical documentation whatsoever (except a general description of its company and the qualifications of its staff), to describe the product proposed and to establish the timeframe within which it proposes to meet the Army's needs. In fact, the record indicates that the protester cannot modify an existing product and must design a new item which would then first be ready for agency evaluation and testing. Further, while the record indicates that TCI has recognized the difficulties which may arise in testing proposed low profile antennas, it speculates that its antenna will need only minimal testing and thus can be delivered to the Army within the 7-month delivery schedule in the RFP. The Army, on the other hand, considers TCI's time estimates unrealistic in light of the fact that similar products, including Eyring's antenna, have taken much longer (at times several years), to develop and adequately test. Despite TCI's unsupported assertions that it will have a product sometime in the future which will compete with the Eyring low profile antenna, the fact remains that TCI has not submitted a

proposal or any technical information of a proposed product for consideration and evaluation by the Army, although it was requested to do so.^{1/} As such, we find no support in the record to indicate that TCI, or any other firm, is another available source to meet the government's needs within the required time. See AZTEK, B-229594, Mar. 2 1988, 88-1 CPD ¶ 221. We have no basis on which to disagree with the Army's conclusion that only Eyring can meet its current requirements, and thus conclude that the proposed sole-source procurement is unobjectionable.

The protest is denied.

for *James F. Hinchman*
James F. Hinchman
General Counsel

^{1/} The protester relies primarily on Audio Intelligence Devices, 66 Comp. Gen. 145 (1986), 86-2 CPD ¶ 670, to support its view that TCI's statement of interest is sufficient to compel a competitive solicitation. However, in that case, unlike this one, we found that the information submitted by the protester was improperly evaluated by the agency. Here, TCI simply has not provided any technical information to establish that it has a product to meet agency requirements.